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Montana EEOAA

Equal Employment Opportunity and Affirmative Action Program

Report to the Governor

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annual report for the period
July 1, 1988 to June 30, 1989

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THE 1989 MONTANA EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION PROGRAM'S REPORT TO THE GOVERNOR WAS PREPARED BY THE STAFF OF THE STATE PERSONNEL DIVISION, DEPARTMENT OF ADMINISTRATION

LAURIE EKANGER
ADMINISTRATOR
State Personnel Division

MARK CRESS
BUREAU CHIEF
Employee Relations Bureau

LINDA S. DAVIS
COORDINATOR
Equal Employment Opportunity
and Affirmative Action Program

LINDA CURRIE
PERSONNEL SPECIALIST
EEO and Disabled Employment

BEVERLY M. PICKETT
TECHNICIAN
Word Processing Section

OTHER CONTRIBUTORS

ANNE MACINTYRE
ADMINISTRATOR
Human Rights Division
Department of Labor & Industry

DAVID RUSOFF
STAFF ATTORNEY
Human Rights Division
Department of Labor & Industry

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INTRODUCTION

No longer are Equal Employment Opportunities (EEO) and Affirmative Action Programs the right thing to do; now they're the smart thing to do. The nation will be facing a labor shortage in the next century, and traditional sources of labor -- young, white males -- are rapidly shrinking. Nationwide, employers will be tapping non-traditional workers -- women, minorities, the economically disadvantaged, disabled -- to meet their labor needs. Our challenge is to help prepare for full and effective participation of these groups in the workplace.

In the next century the nation's economy will become rooted in service industries. In order to be competitive, Montana must find ways to increase worker output in health care, education, retailing and government services. As the workforce changes, employers must prepare to meet the needs of an aging workforce, reconcile the needs of women with their work and families, and integrate the economically disadvantaged minorities and disabled into the workforce.

The basic plan for accommodating a diverse workforce (EEO) is the law of the land. In the public sector of our society this means that all persons, regardless of race, color, religion, sex, or national origin shall have equal access to positions in the public service being limited only by their ability to do the job. There is evidence in all sectors of our society that such equal access, at times, has been denied to members of certain groups because of their age, sex, racial, or ethnic characteristics. The remedy for such past and present discrimination is twofold.

On the one hand, vigorous enforcement of the laws against discrimination is essential. But equally, and perhaps even more importantly are affirmative, voluntary efforts on the part of public employers to assure that positions in the public service are genuinely and equally accessible to qualified persons, without regard to their sex, racial, or ethnic characteristics. Without such efforts equal employment opportunity is no more than a wish. The importance of voluntary affirmative action (AA) on the part of employers is underscored by our laws. Title VII of the Civil Rights Act of 1964 gives the basic premise of nondiscrimination. Montana's Executive Order 24-81 commits the executive branch of state government to an Equal Opportunity Program. Montana's Human Rights Act and Governmental Code of Fair Practices include the same protection as Title VII and add marital status, handicap and political beliefs as protected categories. In the Montana Constitution (Article 11, Section 4), we note: "The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person

in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas."

The goal of any affirmative action program should be achievement of genuine equal employment opportunity for all qualified persons. Selection under such plans should be based upon the ability of the applicant(s) to do the work. Such plans can not require the selection of the unqualified, or the unneeded, nor should they require the selection of persons on the basis of race, color, sex, religion, or national origin. Montana state government affirmative action plans reflect careful position by position analyses of our work force compared to Montana's labor market. Goals are established for state agencies based on the findings.

EEO Programs everywhere are presently using 1980 census data which is now nine years old. The relevant age of this data may appear to distort current figures. As 1990 census figures become available, a change in all EEO programs' statistics, including Montana's, will be noted. With this in mind, we present this Annual Report which focuses on the current status of Montana's EEO/AA program.

CHAPTER I

EXECUTIVE SUMMARY

A. REASON FOR EEO/AA PROGRAM AND ANNUAL REPORT

Title VII of the Civil Rights Act of 1964 requires that all persons be given equal opportunity in employment regardless of their sex, race, national origin, religion, or age. Montana's Human Rights Act and Governmental Code of Fair Practices provide the same protection and add marital status, handicap and political belief as protected categories.

Executive Order 24-81 commits the executive branch of state government to an Equal Employment Opportunity Program. The major program objective is to "eliminate discrimination in personnel salaries and procedures, job structuring and classification, hiring, firing, promoting and training." The Department of Administration is charged with implementing and maintaining the program. This annual report describes the program's status.

B. CONTENT OF REPORT

This report focuses on the executive branch's FY 89 employment of classes of citizens protected under both federal and state law, and provides recommendations for improving areas of concern.

Included are chapters on Employment of Women, Minorities and the Disabled; Special Activities and Recommendations for the fiscal year; Equal Employment Opportunity Section Activities; Agency accomplishments; U.S. Supreme Court Rulings; and recent decisions of the Montana Human Rights Commission.

C. FINDINGS AND RECOMMENDATIONS

The goal of the executive branch Affirmative Action program is to have a workforce that mirrors the civilian labor force. For example, women represent approximately 6% of the civil engineers in Montana based on Montana census and recent college graduation statistics. State agencies with civil engineer positions should be expected to have approximately 6% representation of women in these positions. A review of the employment of protected classes in the executive branch in FY 89 shows that while progress toward reflecting Montana's labor force has been made in some areas, all areas still need improvement. Progress has increased in tenths of percentage points. Major changes are not expected, but this type of slow progress will hopefully continue.

Minorities

In the executive branch minorities constitute 3.3% of all employees as compared to 4.8% of the Montana civilian labor force. The representation of minorities increased from 3.2% in FY 88 to 3.3% in FY 89. See Appendix F for further explanations.

Disabled

In the executive branch 3.0% of all employees are disabled as compared to an estimated 5.0% representation in the Montana civilian labor force. The representation of disabled decreased from 3.2% in FY 88 to 3.0% in FY 89. See the Appendix F for further information.

Women

While women are well represented overall in the state workforce, women are still concentrated in lower paying occupational categories such as clerical, and in the lower levels of the higher paying occupational categories such as professionals and managers. Women represent 21.1% of the managers/administrators in the state workforce but they fall short of the 30.6% representation in the Montana labor force. Agency affirmative action measures for women, consequently, should focus on upward mobility and on recruitment for non-traditional occupational areas. Further information is found in Appendix F.

In EEO Category A, Administrators and Officials, the representation of women increased slightly from 20.6% in FY 88 to 21.1% in FY 89. In Category B, Professionals, there was also a slight increase from 40.7% in FY 88 to 41.1% in FY 89. See Appendix F for further information.

CHAPTER II

MONTANA'S CHANGING WORKFORCE

A. OUR WORKFORCE IS CHANGING

Montana can gain a competitive advantage by making the best use of our diverse human resources. Traditional sources of labor are no longer available which gives way to the potential "new workforce" -- people of different ages, races, ethnic/national backgrounds, physical abilities and lifestyles.

Employers will be able to satisfy their labor needs only if they successfully confront barriers to diversity and enable individuals outside the economic mainstream to take advantage of meaningful employment opportunities. Montana state government has begun to change its work habits, policy system and behavior to adapt to the needs of a diverse work force.

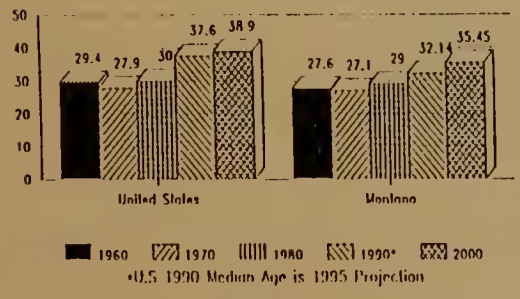
B. CHARACTERISTICS OF MONTANA'S WORK FORCE TO THE YEAR 2000*

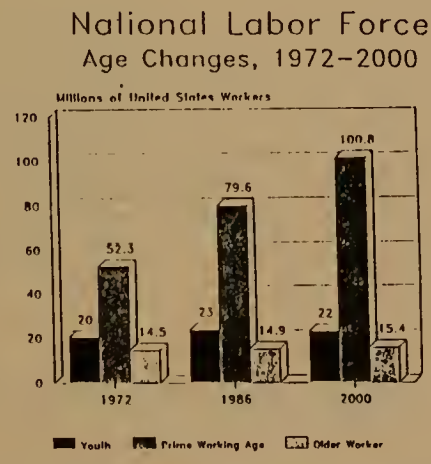
Older Workers

Montana is following national trends which show a decrease in youthful workers. As the younger end of our population decreases in its workforce role, we can anticipate greater participation from older workers.

As Montana's median age rises, we will see an overall increase of nearly 32% in the "mature workers" category (age 45-64). This reflects a lower percentage increase than national projections, but still a large increase.

TABLES A & B*





* Work Force to the Year 2000: Opportunities and Challenges, DOLI, Aug. 1988

With this increase on the horizon, Montana must work toward increasing the adaptability of older workers to a changing work place and changing skills.

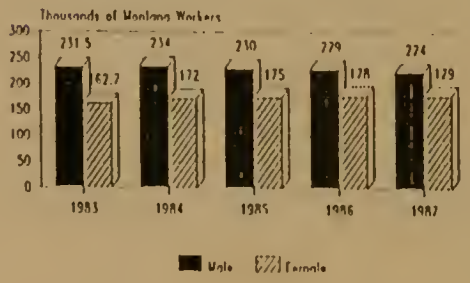
We must offer employment and training opportunities for people so they can bring years of personal experience and expertise to the job. This is particularly true in the area of skill development. As we move toward a service-oriented workforce, new skills must be taught.

Working Women in Montana

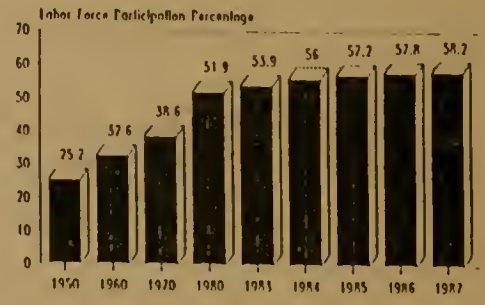
National trends project that 64% of the national labor force growth will be composed of women by the year 2000. While there are no equivalent projections for Montana of increasing numbers of women entering the work force, we are expected to follow the national trend. In Fiscal Year 1989 women comprised 45.7% of the state workforce.

TABLE C & D*

Montana Civilian
Labor Force, 1983-1987
Male and Female Components



Montana Women Workers
Labor Force Participation
Change, 1950-1987



Montana's Minority Picture

National trends in reduced population growth, plus growth in new jobs should offer opportunities to both minorities and the disabled. The demanding nature of future jobs, the need for higher levels of educational achievement and the disproportionate number of minorities who are undereducated will affect their future employment.

* Work Force to the Year 2000: Opportunities and Challenges, DOLI, Aug. 1988.

National minority trends do not appear to apply to Montana for several reasons:

1. Montana lacks minority groups.

   a. Native Americans comprise less than 5% of the state's population. (Total minority population in Montana is 4.8%)

   b. Hispanics are just over 1% of the state's population.

   c. No other minority group equals as much as 1/2 of 1% of state population.

2. Montana does not experience the "flow" of significant migration among states nationally.

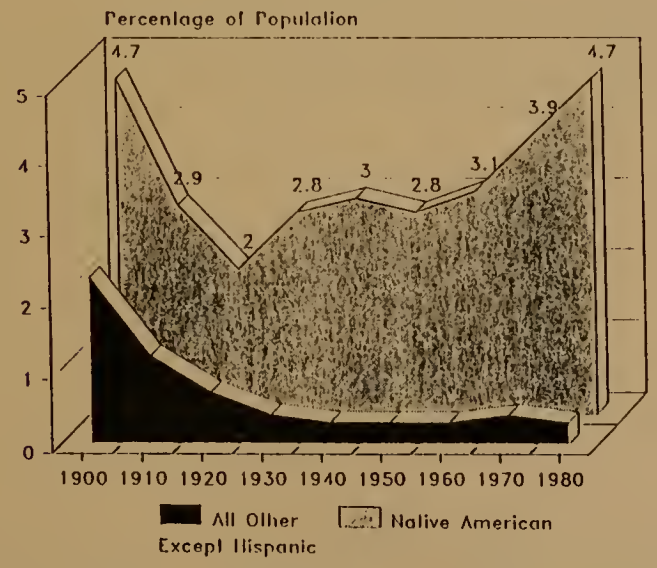
3. Montanans lack the job skills necessary for competitive growth in the job market. Montana's Native Americans are not expected to overcome this roadblock in the immediate future.

TABLE E*

Montana's Minorities

Percentage of Population

1900–1980



* Work Force to the Year 2000: Opportunities and Challenges, DOLI, Aug. 1988

Disabled Employment Facts

Of the 13 million disabled persons of working age in the U.S., only 34% work full or part time. Eight and one-half million disabled persons are unemployed and 66% of these people want to work.* The disabled community is a potentially important, but often overlooked, source of capable new workers. This group is particularly well suited to the economy's shift toward service industries and away from physically demanding manufacturing jobs.

Five percent of Montana's civilian labor force is disabled. Montana must tap into this base in order to remain competitive. In preparation for this, the Governor's Committee on Employment of People with Disabilities and the Supported Employment Task Force prepared objectives to aid state agencies in the recruitment and selection of disabled persons.

* Opportunity 2000, Hudson Institute, Indianapolis, Indiana, Sept. 1988. Prepared for the U.S. Department of Labor.

CHAPTER III

EMPLOYMENT OF MINORITIES, DISABLED AND WOMEN

A. STATE OF MONTANA PROGRAM

The trend toward a more diverse workforce due to population changes is beginning to affect Montana's workforce. While changes are slow to become apparent in our rural environment, we must begin to adapt now. The State's EEO/AA program provides the basis for future adaptation by structuring our immediate goals in relation to future employment and training endeavors.

B. EEO/AA PROGRAM STATISTICAL RECORD KEEPING AND REPORTING

The executive branch is required by federal and state laws and regulations to keep comprehensive records on the sex, race, age, and disability status of both employees and applicants. This data is essential for an effective state EEO/AA program. Knowing facts, such as the selection rate of 5.0% for the disabled is much less than the 11.5% selection rate for non-disabled, will help agencies to look for and identify those personnel practices which unfavorably impact or discriminate against women, minorities, or disabled persons.

The state collects EEO information through the computerized Personnel/Payroll/Position Control (P/P/P) System.

The P/P/P system contains information on state employees and on applicants for state jobs. For applicants, EEO information is collected on a tear off portion of the state application form. For employees, EEO information is collected and updated using the EEO Input Form (see Appendix C).

These automated records produce statistical reports used to analyze the state's employment practices.

Types of Analyses Used in this Report

The analyses used in this report are similar to those used by state agencies to examine their employment of protected groups. When examining their employment statistics, however, agencies conduct more detailed analyses.

Workforce Analysis is a report on the number of state employees by race, sex and disability in each EEO-4 Category (see Appendix B for EEO-4 Category definitions). (See Table F.)

TABLE F

EEO PROFILE OF PERMANENT EMPLOYEES

By Job Category
As of June 30, 1989

EEO Category	Total Number 88	Total Number 89	% Female 88	% Female 89	% Minorities 88	% Minorities 89	% Disabled 88	% Disabled 89
A. Administrators & Officials	688	706	20.6	21.1	2.8	3.3	3.5	3.3
B. Professionals	2,946	3,022	40.7	41.1	2.9	2.9	3.9	3.8
C. Technicians	1,879	1,876	54.3	55.4	3.4	3.2	2.8	2.5
D. Protective Services	614	634	9.6	9.5	2.0	2.1	1.1	1.6
E. Para Professional	744	747	63.7	62.7	5.0	5.4	3.5	3.2
F. Clerical	1,393	1,409	90.1	90.3	3.0	3.3	2.4	1.7
G. Skilled Craft	718	735	4.2	3.9	4.3	4.8	4.0	4.1
H. Service & Maintenance	445	457	38.2	37.6	3.4	3.3	3.6	3.3
STATE TOTAL	9,377	9,586	46.1	46.2	3.2	3.3	3.2	3.0

Availability Analysis estimates the percentage of minorities and women in the Montana civilian labor force who have the skills necessary for entry into each EEO-4 category. U.S. census data for Montana is used in estimating availability figures. (Information is not available on the EEO-4 Category level for people with disabilities.)

Utilization Analysis compares the state's workforce (Workforce Analysis) to Montana's civilian labor force (Availability Analysis) to determine whether or not a protected group is underutilized. Underutilization means having fewer minorities or women employed in a particular job category than would be reasonably expected compared to their availability in the same job category in the civilian labor force. For instance, the Native American availability rate in the Montana civilian labor force for professional jobs is 4% If an agency has 100 professional positions the underutilization analysis would apply the 4% and conclude that 4 of the 100 professional positions is equal to the availability. If the agency already has three Native Americans in the professional workforce, we would subtract 3 from the 4 to get 1. One more Native American should be hired to correct the underutilzation. This type of analysis is one commonly used by the Equal Employment Opportunity Commission and the courts as a first step in assessing the existence of employment discrimination.

Whenever underutilization is identified, recruitment and selection data are reviewed to determine the causes of the underutilization.

Applicant Flow Analysis examines the recruitment and selection of applicants to determine if these activities contribute to an underutilization problem.

A recruitment problem means there are fewer minorities, disabled or women applying for positions than would reasonably be expected compared to their availability in the civilian labor force. (See Table 1 in Appendix E, Applicant Rate.)

A selection or hiring problem means selection practices have an adverse impact on protected groups. A selection problem is commonly identified by comparing the selection rate of a protected group to the selection rate of the rest of the labor force, (i.e., comparing the selection rate of minorities to the selection rate of non-minorities). If a protected group's selection rate is significantly lower than the selection rate for other groups, then a selection problem exists. (See Table 2 in Appendix E, Selection Rate.)

In the sections on women, minorities and the disabled, the analyses listed above are applied to assess the state's performance in the employment of protected groups, and to identify problem areas which

should be addressed by state agencies in the future through affirmative action. Recommendations for correcting problem areas are addressed in the following chapter.

C. EMPLOYMENT OF MINORITIES

Under Title VII of the Civil Rights Act and under Montana's Human Rights Act, American Indians/Alaskan Natives, Asian/Pacific Islanders, Blacks, and Hispanics are considered minorities (see back page of EEO Input Form, Appendix C for definitions of each group). The employment of minorities is discussed using the total workforce, because Montana civilian labor force and state workforce numbers are too small to draw meaningful conclusions for individual job categories.

TABLE G

A comparison of current minority representation in state government for permanent positions (3.3%) to the end of FY 88 (3.2%), indicates a slight increase.

D. EMPLOYMENT OF THE DISABLED

Under the Vocational Rehabilitation Act, a disabled person is defined as having a physical or mental impairment which substantially limits a major life activity (such as walking, caring for oneself, seeing, hearing, speaking, learning or breathing); or has a record of such impairment; or is regarded as having such an impairment. This definition is used in identifying disabled persons in the state workforce.

As with minorities, the number of disabled persons in the Montana civilian labor force and in the state workforce is too low to draw statistical conclusions on the category level. Consequently, assessment of the executive branch's employment of disabled persons is discussed on the basis of the whole workforce.

The Equal Employment Opportunity Commission (EEOC) does not require reporting on utilization of disabled persons. U.S. Census figures on the availability of the disabled in the civilian labor force by census job code are not available. Instead, employers are required by the Vocational Rehabilitation Act and the Montana Human Rights Act, to treat disabled applicants on an individual basis and make reasonable accommodations whenever appropriate. It still is helpful, however, to analyze the utilization of disabled workers to determine the effect of state government employment practices on employment of the disabled.

Based on 1980 U.S. Census special survey data, the availability of disabled persons in Montana's civilian labor force is an estimated 5.0% Disabled persons currently constitute 3.0% of the executive branch's permanent employees.

TABLE H

E. EMPLOYMENT OF WOMEN

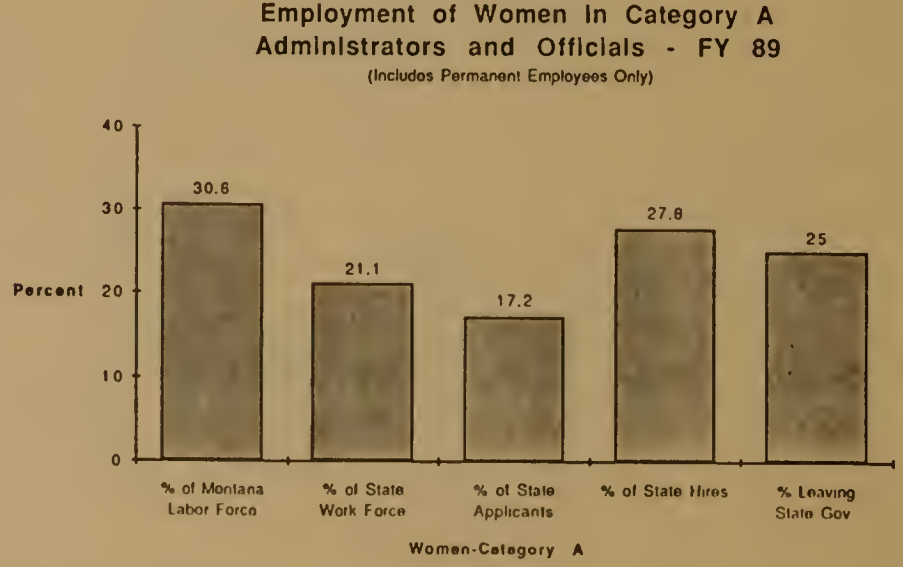
Women constitute 46.2% of the state workforce and 42.6% of Montana's civilian labor force. Women are employed by the State of Montana at a percent that is 3.6% higher than the civilian labor force.

TABLE I

EEO Category A, Administrators and Officials

Women constitute 21.1% of Category A, Administrators and Officials, in the state workforce (includes permanent employees only) as compared to their 30.6 representation in this category in the Montana civilian labor force.

TABLE J



Women constituted 17.2% of the applicants for state positions in Category A. This is less than their 21.1% representation in this category in the state workforce, and far less than their 30.6 representation in the Montana civilian labor force.

The selection rates for Category A are 11.3% for women (8 hired divided by 71 applicants), and 8.8% for men (30 hired divided by 340 applicants).

EEO Category B, Professionals

Women comprise 41.1% of Category B, Professionals, in the state workforce as compared to their 49.1% representation in this category in Montana's civilian labor force. However, a large proportion of women professionals in the labor force are teachers, an occupation not prevalent in the state workforce. Analysis of professional occupations in the state's workforce indicates that an availability closer to 40% is more appropriate. Using the 40% as the availability figure, the state as a whole has reached parity in the professional category.

TABLE K

Although parity has been reached in this category as a whole, there remain areas of significant concern. There are still a number of occupational groups in the state workforce that have fewer women represented as compared to their representation in the labor force.

CHAPTER IV

SPECIAL ACTIVITIES AND RECOMMENDATIONS FOR FY 90

A. GENERAL RECOMMENDATIONS FOR EMPLOYMENT OF WOMEN, MINORITIES AND DISABLED

Discrimination is unlawful. Discrimination will prove very costly in the future -- not just in terms of liability and legal penalties, but in terms of productivity and economic reality.

By 1992, non-disabled young white males will, for the first time, be a minority in America's workforce. With the labor shortage upon us, Montana must recruit older males, females, minorities and disabled persons. The EEO Section recommends continued expansion of our workforce goals through awareness and training. We look forward to helping state agencies to:

1. maintain the dynamism of our aging workforce;

2. reconcile the conflicting needs of women, work and families;

3. integrate Native Americans more fully into the state workforce;

4. recruit and hire persons with disabilities.

B. EMPLOYMENT OF MINORITIES

The 3.3% representation of minorities in state government in FY 89 is still significantly below their estimated 4.8% representation in Montana's labor force. The selection rate for minorities in FY 89 was nearly equal that of non-minorities (11.1% v. 11.2%), but the minority application rate in FY 89 was lower than their representation in the labor force (4.0% v. 4.8%). Affirmative action measures, therefore, need to focus on increasing the application rate for minorities.

In FY 90 the EEO Section recommends that staff travel to Job Service offices, reservations and to Native American Indian colleges and high schools to meet with employment and placement networks. The purpose of the meetings is to establish better communications with these recruitment sources, and to establish better procedures for obtaining and processing applications from Native American Indians.

Meetings with other minority group organizations in various cities and Montana colleges should also be conducted to make these groups aware of the State's affirmative action program, and aware of ways to find out about and apply for state positions.

C. EMPLOYMENT OF THE DISABLED

Increased recruitment of the disabled is essential in order to improve the disabled's representation in state government. The application rate for the disabled in FY 89 (2.9% of all applicants) decreased from FY 88 (3.3%). The disabled's application rate for state government positions is significantly below their estimated 5% representation in Montana's labor force. Increased recruitment of people with disabilities will, consequently, remain an area of emphasis in the EEO Program.

As part of its overall recruitment effort, the EEO Section staff will be meeting with representatives of disabled employment programs to find ways of improving the application rate of people with disabilities.

In June 1988, a target for employment of people with severe disabilities was initiated by the Governor's Committee on Employment of People with Disabilities. A Task Force on supported employment has been formed to help state agencies set affirmative action goals to recruit and select disabled persons. As this initiative is adopted by state agencies, it should help increase the disabled's representation in state government. The EEO Section will continue to provide assistance as needed to agencies as they implement this initiative into their affirmative action plans. Job restructuring, the use of supported employment job coaches and accessibility studies are included in the plans for this project.

D. EMPLOYMENT OF WOMEN

As shown above, employment of women, overall, exceeds their representation in the Montana labor force; and selection rates for women are very good. Employment of women in certain EEO Categories and occupational groups, however, still needs attention.

Employment of women in EEO Category A, Officials and Administrators, in state government (21.1% representation) still lags behind the Montana labor force (30.6% representation). The application rate for women in this category has dropped significantly (17.2% in FY 89 as compared to 26.6% in FY 88). Since the application rate is much lower than labor force availability, increasing the female applicant pool for Category A positions should still be emphasized. The State Personnel Division's Professional Develop-

ment Center has developed a pre-management training program which specifically includes issues pertinent to women in management. Agencies which are experiencing underutilization of women in Category A should identify women in professional positions whose potential for upward mobility would be enhanced by attending this training program, entitled "The Basics of Management." This program, successfully completed, is accepted by most agencies as equivalent to one year of supervisory experience.

Female applicants for professional positions (37.6% of all applicants) still lags behind both their representation in state government (41.1%) and their representation in the Montana labor force (49.1%). Therefore, recruitment of women professionals should also be emphasized, especially in those agencies which are still experiencing underrepresentation of women in this category.

The EEO Section's overall plan to establish better communication with recruitment sources for protected groups includes plans to meet with recruitment source organizations for women statewide. Special emphasis in this recruitment project will include attempts to attract female applicants for non-traditional occupations for women.

CHAPTER V

EQUAL EMPLOYMENT OPPORTUNITY SECTION ACTIVITIES

The Equal Employment Opportunity (EEO) Section's major program responsibilities are:

1. To develop and maintain the state's Equal Employment and Affirmative Action Program, which includes review and approval of all state agency EEO/AA Plans.

2. To provide technical assistance to agencies on EEO/AA related matters.

3. To maintain and enhance EEO information systems on the state's computerized Personnel/Position Payroll/Control (P/P/P) system and to provide periodic computerized reports to agencies on their EEO performance.

4. To provide administrative support to the Governor's Committee on Employment of the Disabled.

A. EEO/AA PROGRAM DEVELOPMENT AND MAINTENANCE

Affirmative Action Plans

FY 89 was the middle of the two-year affirmative action plan cycle. No changes were made in existing state plans. An affirmative action progress report was compiled in mid-cycle to assist agencies and the EEO section in identifying goal achievements and reemphasizing work areas.

Ongoing assistance was available to agencies in the monitoring and enforcement of their AA program. The EEO Section has continued to work with the Montana Highway Patrol, Department of Justice, in maintaining their progressive recruitment and selection procedures for their cadet program.

Standardized AA Plan

In order to assist agencies, the EEO section developed a draft standardized AA plan/format. This model plan provides a step-by-step procedure for agencies. It begins with a model policy statement and then focuses on the following areas: dissemination of policy and policy statement; agency overview; agency flow chart; responsibility for implementation; identification of and correction of problem areas; AA for the disabled; reporting and internal

auditing procedures and a final section on annual review of the plan.

A significant feature of this plan is the worksheet for managers. This should facilitate the flow of information between EEO officers and managers. The EEO Section will also present AA briefings to managers which will demonstrate the use of the worksheet and the importance it can play in preparing an affirmative action plan.

Recruitment/Outreach

Low application rates for minorities are still a barrier to employment in state government. In order to improve the recruitment of these minorities as well as women and the disabled, the Section continued their work with a task force of agency personnel officers and Job Service representatives to develop consistent affirmative action job order language and procedures. This Recruitment Procedures Task Force recommended changes which resulted in new guidelines for completing vacancy announcements and a draft of a new vacancy announcement. In addition, a new system for handling state applications and vacancy announcements by Job Service offices was implemented. Outreach sessions to explain these new procedures and the state's AA program were conducted at every Job Service office in the state.

Outreach with Job Service Offices

In conjunction with the presentation of workshops on EEO, Recruitment and Selection, the EEO Section conducted outreach sessions in every Job Service Office in the state. An explanation of Equal Employment Opportunity was followed by a thorough description of the state's Affirmative Action Program. The new guidelines on vacancy announcements and state employment recruitment were also discussed. These were part of an effort to standardize procedures to help applicants. The EEO Section will continue these outreach activities with emphasis on participation of local job placement networks because these networks place local minorities, women and disabled persons.

Sexual Harassment Prevention Program

The EEO Section has continued to offer training on Sexual Harassment Prevention. A special two-hour session of each of the statewide EEO, Recruitment and Selection Training Workshops was devoted to sexual harassment prevention. All Sexual Harassment Prevention training was updated in FY 89 to include new EEOC guidelines on employer liability and investigations.

The section also offered technical assistance to agencies on internal investigations and training.

Upward Mobility for Women

The section continued to work in cooperation with the Professional Development Center on development of a basic management training program which incorporates women's issues and develops awareness of sex bias. This program has been initiated to facilitate the movement of women from the professional level of state government to the administrative/managerial level. The program, which most state agencies recognize as equivalent to one year supervisory experience, began in October of 1988 and the classes to date have had an equal representation of women and men.

The diversity and EEO classes developed for this program have been incorporated into the existing higher-level management training programs offered by the Professional Development Center. They include: suspect employment inquiries, discrimination law and sexual harassment prevention, information on EEO/AA and managing and communicating with a diverse workforce. This was also presented on an as-needed/requested basis for the "Basics of Management" class. Also, the EEO Section's presentation is now part of the regular agenda for the Montana Highway Patrol and Law Enforcement Academy. All recruits receive this training. The EEO Section feels this type of education will be in great demand in the future as the Montana state workforce follows the national trend toward an aging, more predominantly female, minority and disabled employee group.

B. TECHNICAL ASSISTANCE

In FY 89, the EEO Section emphasized broadening the understanding of the Equal Employment Opportunity/Affirmative Action (EEO/AA) Program in state agencies. The following activities were conducted in this area:

AA Briefings and EEO Training

The section's AA Briefing presentation clarifies the EEO/AA Program and explains the program to state agency managers. These briefings were conducted for several agencies.

EEO Recruitment and Selection Workshops and Sexual Harassment Update

Special workshops on EEO Recruitment and Selection with an update on sexual harassment prevention were presented around Montana during FY 89 into FY 90. These workshops, co-sponsored by area Job Service Offices, were given in 23 geographical areas of the state. To date over 500 people have attended to increase their understanding of the recruitment and selection process and of how EEO and discrimination laws play a part. Sessions are continuing and the final result should show nearly 650 persons have been educated in this endeavor.

Annual EEO Conference

The eighth annual EEO Conference was held September 28 and 29, 1988 in Butte. It emphasized the trends towards hiring and managing minorities , women and disabled in the work force. With a theme of "Diversity Makes a Difference," the conference attracted 77 persons, including EEO/Personnel officers and managers from state and local government, hospitals, colleges, human resource groups, women and minorities organizations, labor unions and private employers. The 1989 EEO Conference is scheduled for September 13 and 14 in Missoula. This ninth annual conference will emphasize experiential, hands-on training for employers, managers and personnel officers. The conference will offer special sessions on Investigating Discrimination Complaints, particularly sexual harassment complaints; Wrongful Discharge; Managing a Diverse Workforce; Supreme Court and Human Rights cases update; and Awareness of Cultural Differences in Employment. In line with the trend towards a changing workforce, this conference entitled, "Fundamentals for the Future," will emphasize skills and methods for dealing with an aging, female, minority and disabled workforce in an innovative manner.

Special Assistance

The section finished work with the Montana Highway Patrol Promotion Board in FY 89 and also worked with the Department of Fish, Wildlife, and Parks in planning selection procedures. The EEO Coordinator participated in the selection process for the Department of Fish, Wildlife, and Parks. In addition, the Coordinator aided the five Vo-Techs in writing Affirmative Action Plans.

This type of special assistance has proven productive in correcting problem recruitment and selection procedures and discriminatory practices. The EEO Section will continue to bring special problem areas to the attention of state agency management and offer special assistance on corrective measures.

Technical Assistance Calls

The EEO Section received more than 900 telephone calls requesting information and assistance on EEO-related matters. Much of this increased activity was a result of presentations given to groups from the public and private sector.

The nature of assistance covered:

- EEO/AA
- Discrimination
- Recruitment/Selection
- Outreach Programs
- Sexual Harassment
- Training
- P/P/P System
- Disability and Accommodation
- Governor's Committee on the Employment of the Disabled

The calls have been from:

- State Agencies
- State Employees
- School Districts
- Disabled, minority, and women's organizations
- City/County government including law enforcement
- Applicants
- Private sector employers

C. MAINTENANCE AND ENHANCEMENT OF EEO-P/P/P SYSTEMS

In FY 89, the EEO Section emphasized improving and streamlining computer reports and analyses, and updating databases used by state agencies and the EEO Section to analyze EEO performance. The following activities and projects were undertaken in this area:

EEO Input Form

EEO Input Forms were used to obtain more reliable, accurate race, sex and disability data on state employees. Since the work force analysis (women, disabled, and minority employees utilized) forms the foundation for identifying underutilization of women, disabled, and minorities, this provided invaluable information to the EEO/AA program.

System Enhancements

A number of modifications were made to P/P/P programs and reports to improve ease of use, accuracy and to comply with federal reporting requirements. These included modifications to the P/P/P request forms for more accurate information and ease of access.

State Application

The state application was revised to coordinate and clarify information on preference and applicant survey portions. This streamlined P/P/P data.

D. GOVERNOR'S COMMITTEE ON EMPLOYMENT OF PEOPLE WITH DISABILITIES

Executive Order No. 30-81 creating the Governor's Committee on Employment of the Handicapped (GCEH) charged the Department of Administration with providing administrative support to the committee through December of 1987. Executive Order No. 3-88, which replaced No. 30-81, extended this responsibility of providing administrative support. An EEO Section staff person serves as executive director to the committee. The executive director carries out directives issued by the committee at quarterly meetings and conducts other committee functions on an as-needed basis.

Annual Conferences

A day-long conference titled "Employment: A Two-Way Opportunity" was sponsored by the Governor's Committee and the Human Resources Development Institute (AFL-CIO). The Forum was held October 26, 1988, in Butte.

The forum provided a means for disabled persons, service providers and employers to communicate problems and solutions concerning employment. It focused on current efforts to sustain and increase the number of employed disabled persons and it targeted problem areas for immediate action.

Mike White, Disabled American Veteran of the year for 1988, was the keynote luncheon speaker. Also at the luncheon was a presentation of awards by Governor Ted Schwinden.

One hundred fifty-six persons attended this forum. It was so successful, the Committee has scheduled its 1989 conference. Focusing on today's trends and the reshaping of tomorrow's workforce with its opportunity for increased employment of the disabled, the 1989 conference is titled, "Action Plan '89 - Today's Opportunities For Tomorrow's Jobs." This will be October 24 at the Colonial Inn in Helena.

Uniting disabled persons, employers and service providers in the common goal of partnership to provide opportunities for all people with disabilities should yield a strong voice in the employment arena.

Awards Program

The Governor presented four Annual Awards and a Service Achievement Award at the 1988 conference. During the 1988 award year, the Governor's committee presented 50 Achievement Awards, 74 Merit Awards, and 57 Key Employer Awards. The Key Employer Awards were phased out during this award period. Governor Stephens has continued to provide assistance to this program and the Achievement and Merit Awards are continuing to be presented on an ongoing basis. Governor Stephens will present Annual Awards at the 1989 Disability Employment Conference in Helena.

Disability Employment Awareness Month

A proclamation naming October 1988 Disability Employment Awareness Month was prepared by the Section and signed by the Governor. Special promotional packages on the month of observance were prepared and forwarded to Job Service and Vocational Rehabilitation Offices statewide. Other promotional efforts included taped appearances on radio and television news programs by the staff and Committee members.

Work in preparing for the 1989 month of observance during October was begun during FY 89. Regional groups were either contacted or are in the process of being formed to conduct awareness activities during October.

Barrier Awareness Week

At the request of the State Coordinator of Barrier Awareness Week, May 8-13, 1989, the Executive Director of GCEPD elicited cooperation from state agencies in making state government responsive to the project.

Ten state agencies responded by conducting barrier assessments of their buildings or by planning special activities during this time. The EEO section offered suggestions for activities and conducted Windmill Training Sessions in conjunction with this observance.

Public Service Announcement

Preliminary work on producing a 30 second public service announcement was completed in FY 88. Through a grant from the Women In Employment Advisory Council, the committee received $2,000 to complete a PSA dealing with disability employment. Filming and production will be completed early in FY 89.

Work Plan

With a new person as the Executive Director, the GCEPD Work Plan for the calendar year was re-formulated. The work plan was submitted to the Chair and approved in January of 1989. Copies of the work plan are available through the EEO Section, State Personnel Division.

Quarterly Meetings

Four Committee meetings were held in FY 89. The EEO Section scheduled all meetings and prepared materials including special reports for each meeting. Minutes on all meetings were prepared and sent to members and organizations having an interest in committee affairs.

E. OTHER ACTIVITIES

In addition to assistance provided to state agencies, Section staff also provided assistance to organizations outside of state government as follows:

1. The State EEO Coordinator presented a portion of the Helena area Expanding Your Horizons (EYH) program sponsored by the Office of the Superintendent of Public Instruction. This included presentation of interviewing skills at an all-day conference on career exploration for middle school students.

2. Assistance in understanding and writing Affirmative Action plans was requested by and given to the National Center for Applied Technology and MSE, Incorporated, both in Butte.

CHAPTER VI

AGENCY ACCOMPLISHMENTS

State agencies, using the P/P/P system's reports and analyses, have been monitoring the problem areas identified in their Affirmative Action Plans and implementing action items to correct the deficiencies. It is not possible to list activities of all state agencies, but the following are some examples of affirmative action steps taken by state agencies during FY 89.

Department of Highways

In a course on heavy highway construction completed in 1988, 53 persons graduated. Of those graduates, 73% were females and minorities. Goals for women in the EEO-4 categories of Professional and Paraprofessional were met or exceeded. In the Professional category the goal was to hire three women and four were hired, while in the latter category the goal of hiring one woman Paraprofessional was achieved.

Department of Social and Rehabilitation Services

A goal of hiring two qualified females into rehabilitation counselor positions was met with the hiring of four females in nine advertised positions. In the area of disabled employment, progress was achieved with the selection of four disabled persons into department positions. In addition, the establishment of "People Power," a monthly activity designed to increase barrier awareness and conducted by each division, proved to be successful.

Department of Justice

A significant step was made with the hiring of a female criminal investigator. This indicates that qualified female applicants are beginning to apply. An ongoing review of the Highway Patrol promotion process should lead to further gains in the future.

Department of Labor and Industry

A goal to fill one position within the occupational groups Personnel Administration and Public Administration Officials was met. Outstanding progress was reported in the EEO-4 Category B - Professionals. Three years ago females were seriously under-represented in the Employment Counselor positions. With the hiring of

a female this year, half of the 31 positions in this group are now filled by females. In minority utilization, a goal to fill one position in the Technician category was exceeded by hiring two minorities. Also, a goal to hire one minority in the Paraprofessional category was met. A goal to hire and retain qualified disabled individuals was addressed by hiring two disabled applicants and internally promoting three more.

Department of Commerce

In Category A women moved into jobs in three areas: Transportation Division Administrator and Planning Manager I positions and Chief Legal Counsel. Goals for females were met in the Professional category by hiring a female Lottery Marketing Representative and an Accounting & Fiscal Manager I.

Department of Revenue

Disabled representation in the department has increased with the hiring of one such individual and the promotions of two more. Upward mobility was enhanced with the institution of the SWAP Training Program in which management level positions exchange duties with other employees at the same grade level in an effort to enhance and expand the management skills in the department. Participation by Personnel Office in the Task Force on the Severely Disabled and in the Expanding Your Horizons Program were also achieved.

Historical Society

This department was pleased to meet a goal by hiring a female in the Protective Service Workers category.

Department of Institutions

With the hiring of a female Personnel Services Manager the goal for Category A was achieved. In addition, the Central Office reached 50% of its goal by hiring females in the Professional category in Psychologist I and Correctional Treatment Specialist II positions.

Montana State Hospital exceeded its goal for minority representation in the Professional category by hiring four minorities. The goal was to hire one. A goal was also met in hiring a female in one Social Worker and two Drug Counselor positions.

Center for the Aged achieved a goal in the Officials and Administrators category for women. Two positions were filled by females and now three out of the four positions at the Center for this category are filled by females.

Department of Administration

All professional job groups (Category B) were properly represented. In cooperation with the Job Service's On-The-Job Training Program, fourteen people received on-the-job work experience including three disabled persons. Nine of these persons, including one who was disabled, were hired into permanent positions. Two females received promotions within the agency.

Department of Family Services

Underrepresentation in Category A was corrected by hiring a female for the Institution Services Manager I position at Mountain View. In category B, underrepresentation in Service Industry Officials was cut in half by hiring two females as Administrative Officers III.

Department of State Lands

Gained a female professional statistician.

Montana University System

The I.M.A.G.E. conference in June, sponsored by the University System, addressed equity concerns. In addition, Montana University System through Carl D. Perkins Vocational Grants aided projects such as a workbook to help Montanans explore self-employment options and a video to encourage entry into non-traditional jobs.

CHAPTER VII

U.S. SUPREME COURT RULINGS

CIVIL RIGHTS AND EMPLOYMENT:

RECENT RULINGS AFFECT WOMEN AND MINORITIES

There were a number of major rulings in the areas of fair employment practices and civil rights by the U.S. Supreme Court during the 1988-89 term. Several of these rulings are especially important in that they have particularly impacted efforts by women and minorities in their quest for fair employment.

WARDS COVE DECISION

In Wards Cove v. Antonio, the Court held that a disparate impact plaintiff can no longer make out a prima facie case simply by showing minority underrepresentation in a particular job category. Such a plaintiff must now demonstrate that the application of the specific employment practice being challenged has created the statistical disparity under attack. Additionally, the Court said that where a number of employment practices are alleged to have combined to create a disparate impact, the plaintiff must demonstrate the statistical disparity created by each challenged practice.

When looking at the prima facie case, the Court additionally ruled that statistics showing only a high percentage of minorities in one job category within an employer's workforce and a predominance of non-minorities in another category are not sufficient for making a case on minority underrepresentation. The Court maintains the proper comparison is between the jobs in issue and the minority composition of the qualified population in the labor market.

If a plaintiff is able to establish a case of disparate impact, the employer must produce evidence of valid justification for the disputed employment practice. However, the challenged practice need no longer be essential or indispensable to the business. Thus the heavy burden of proving "business necessity" has been replaced with a mere statement of valid justification.

If the plaintiff chooses to prevail by demonstrating that other work practices were available that did not have discriminatory effect, he must prove that such practices be equally effective as those under challenge. Factors such as cost would be relevant in determining "equal effectiveness".

THE MARTIN DECISION

In Martin v. Wilks, the Court affirmed an earlier ruling allowing white firefighters in Birmingham, Alabama to challenge the city's court ordered affirmative action plan on reverse discrimination grounds. The ruling allows individuals who are not parties to an original consent decree to later file suit over actions taken pursuant to the decree. Such court-approved plans were considered unassailable, but this decision seems to make them merely steps in resolving racial discrimination. This opens to litigation any court-approved race discrimination settlement and any judgement that results from trial. This ruling could potentially impact the area of sex discrimination well as race discrimination.

THE PATTERSON DECISION

In Patterson v. McLean Credit Union, the Court redetermined Section 1981 of the Civil Rights Act of 1866. Rejecting a black employee's racial harassment claim brought under this section, the Court held that the section covers only conduct at the initial formation of a contract such as hiring and promotion and conduct that impairs a person's ability to use the legal process to enforce a contract. Work conditions and breaches of contracts are not covered by the statute. This effectively terminates Section 1981 as a civil rights law with respect to private discrimination.

THE LORANCE DECISION

In Lorance v. A.T. & T., the Court decided that the time limit for filing a complaint based on a change in a seniority system begins to run when the change is made and not when the change actually affects an individual. Thus a challenge to an allegedly discriminatory seniority system must be made within 300 days of the system's implementation, regardless of whether workers are only affected years later.

THE RICHMOND DECISION

In Richmond v. J.A. Cronson, the Court struck down a Richmond, Virginia city ordinance that reserved 30% of city-funded construction contracts for minority-owned businesses. In ruling on the idea of "set-asides," the Court, for the first time ever, adopted "strict scrutiny" as the proper constitutional standard for reviewing affirmative action cases. In order to pass this highest level of analysis, challenged legislation must be shown to be supported by a compelling governmental interest and to be narrowly tailored to achieve that interest. In the history of the Court,

only one case has survived strict scrutiny analysis. This was the case involving the internment of Japanese citizens during World War II. Whether the heightened constitutional standard applied to public employers will cross over and have application in the private employer context will probably have to be decided by a future court.

A FINAL CASE

In Price Waterhouse v. Hopkins, the Court reversed and remanded a case in which an employer was found liable for sex discrimination in passing over an employee for a partnership. The Court felt that the lower court was not in error in determining that sex stereotyping played a part in denying the employee partnership, but felt that the employer should not have been required to prove its case by providing "clear and convincing evidence." A less stringent standard of proof should have been used. In a further deviation from standards developed in prior precedents, the Court concluded that in limited instances in which mixed motives exist for an employer's discriminatory treatment of an employee, the burden of proof may be switched to the employer. This shifting of the burden of proof makes the Court's decision important. The Court did emphasize, however, that this shift will apply only in limited cases. In reality, the Court's application of the new shift in burden is not clearly laid out and has added complexity to an already complex trial procedure.

CHAPTER VIII

EEOC POLICY GUIDANCE

EEOC ISSUES POLICY GUIDANCE ON SEXUAL HARASSMENT ISSUES

The Equal Employment Opportunity Commission felt compelled to give EEOC district offices and EEO Officers around the country guidance on the current issues of sexual harassment. On October 25, 1988, they issued a 32 page memorandum providing guidance on defining sexual harassment and establishing employer liability in light of recent cases. The highlights of the memorandum are listed below.

> Sexual Harassment-Rejection of Sexual Advances-Determination of Unwelcomeness -- (1) Where there is some indication that sexual advances have been welcomed or when credibility is an issue, a charging party's claim will be strengthened if she made a contemporaneous complaint; (2) given a fear of repercussions, however, a complaint is not a necessary element of a claim; (3) the complainant's conduct should be examined for consistency with her assertion of unwelcomeness; and (4) any past conduct of the complainant offered to show "welcomeness" must relate to the alleged harasser.
>
> Sexual Harassment initial Bias Showing-Evaluation of Evidence -- Due to the private nature of sexual conduct, resolution often depends on the parties' credibility. Therefore, the complainant and the alleged harasser should be questioned in detail, and corroborative evidence sought. If no corroborative evidence is found, the EEOC may make a liability finding solely on the complainant's credited testimony. Where it is alleged that rejection of unwelcome sexual advances was used as a basis for discharge, there should be a determination of whether the alleged harasser's reasons for the discharge were pretextual. If they are and sexual harassment has occurred, it should be inferred that the complainant was discharged for rejecting the advances. A finding of unlawful retaliation would also result if the discharge occurred because the victim complained.
>
> Sexual Harassment-Hostile Work Environment-Standard for Evaluating -- In determining the severity or pervasiveness needed to create a hostile work environment, alleged harasser's conduct should be evaluated from the standpoint of a "reasonable person." If the conduct would not substantially affect a reasonable person's work environment no violation should be found. This standard should

take into account the context in which the alleged harassment took place as well as the victim's perspective. This same standard should be applied in determination of whether the conduct is sexual in nature.

Sexual Harassment-Hostile Work Environment-Isolated Incidents -- A single, unusually severe incident of harassment may be sufficient to be unlawful. This is especially true if the harassment is physical. The EEOC will presume that unwelcome, intentional touching of intimate body areas is sufficiently offensive to be violation. Moreover, if a complainant is the victim of both verbal and non-intimate physical conduct, the hostility of the environment is exacerbated, making it more likely a violation will be found. Incidents of sexual harassment directed at workers other than the complainant are relevant to the showing of hostile environment.

Sexual Harassment-Hostile Work Environment-Nonphysical Harassment -- When alleged sexual harassment consists of verbal conduct, the investigation should determine the nature, frequency, context and intended target of the remarks. Violation will depend on the totality of circumstances. The fact that a woman chooses a job in an atmosphere that has traditionally included vulgar, anti-female language does not amount to forfeiture of her right to work in an atmosphere free from sexual harassment.

Sexual Harassment-Hostile Work Environment-Sex-Based Harassment -- Harassment not involving sexual activity or language can give rise to liability if it is sufficiently patterned or pervasive and directed at employees because of their sex.

Sexual Harassment-Hostile Work Environment-Constructive Discharge -- Where constructive discharge due to a hostile work environment is proved, the claim will also become one of "quid pro quo" harassment. This occurs when submission to or rejection of unwelcome sexual conduct by an employee forms the basis of employment decisions affecting the employee.

Sexual Harassment-Employer Liability-Actions of Supervisors -- Agency principles should be used to determine whether employers may be liable for sexual harassment by a supervisor. In "quid pro quo" cases the employer will always be held liable because the supervisor has made a decision affecting an employees status and the supervisor

was exercising authority delegated to him by the employer. In cases of hostile work environment created by the sexual conduct of the supervisor, the employer will be directly liable if it knew or should have known of that conduct. On the other hand, liability will be imputed to the employer in such cases if the supervisor was acting within the scope of his employment, or with apparent authority. The EEOC will generally find apparent authority for hostile environment sex harassment by a supervisor where the employer has not established a policy against sex harassment and doesn't have a complaint procedure for such victims.

Sexual Harassment-Remedial Action-EEOC Guidance On -- An effective program to prevent sex harassment should include an explicit policy against such harassment, and that policy should be made clear and regularly communicated to employees. It should also be effectively implemented. Employers should raise the subject with all employees and express strong disapproval. Sanctions for harassment should be explained. A procedure for resolving sex harassment complaints should be implemented. This procedure should encourage victims to come forward, but should not require them to complain first to an offending supervisor. Confidentiality and effective remedies, including protection of victims and witnesses from retaliation, should be ensured.

CHAPTER IX

HUMAN RIGHTS COMMISSION REPORT

A. COMMISSION DECISION

The Human Rights Commission decides contested cases involving claims of illegal discrimination under the Human Rights Act and the Governmental Code of Fair Practices. The Commission follows the adjudicative procedures of the Montana Administrative Procedure Act. During the period July 1, 1988, through June 30, 1989, the Commission issued final orders in several contested cases and issued one declaratory ruling. The contested cases which were decided declaratory ruling are a follows:

-- Case No. AE86-2793, Gunter v. Missoula School District No. 1 (July 25, 1988). The complaint alleged discrimination in employment based upon age. Gunter alleged that the District discriminated against him when it hired a younger person for the position of head warehouseman. Gunter had worked as assistant warehouseman and as head warehouseman during the absence of the head warehouseman. The Commission found that Gunter was as qualified as the person hired but the District had based its decisions upon a reasonable skill reference interview rather than upon age. The Commission dismissed the case.

-- Case No. 8701003276, Porcarelli v. Red Lodge Grizzly Peak, d/b/a Red Lodge Mountain (July 28, 1988). The complaint alleged discrimination in employment based upon race. Porcarelli alleged that Red Lodge Mountain discriminated against her based upon her Mexican national origin in the terms of her employment and in dismissing her. Porcarelli's supervisor issued warnings to her concerning her attitude at work and eventually fired her for failing to properly clean a bathroom floor. The Commission found that Porcarelli failed to meet her employer's legitimate expectations and found that the decision to fire Porcarelli was based upon insubordination, failure and refusal to follow instructions, failure to cooperate with coworkers, and her attempt to injure her supervisor, rather than upon her race. The Commission dismissed the case.

-- Case No. 8701003155, Munyer v. APCOA, Inc. (September 30, 1988). The complaint alleged discrimination in employment based upon age and physical handicap. Munyer alleged that APCOA fired him from his position as a cashier/airport parking lot attendant based upon his age

of 71 and based upon his back and ankle injuries. Without reaching the issue of whether Munyer's physical condition constituted a physical handicap, the Commission found that APCOA based its decision to fire Munyer upon Munyer's failure to meet his employer's legitimate expectation. The Commission found that Munyer failed to perform his duty of removing snow from the airport parking lot sidewalks and that APCOA did not discriminate against Munyer based upon his age or physical condition. The Commission dismissed the case.

-- Case No. ReAMsRtGs85-2599, Wheeler v. Montana Department of Family Services (October 17, 1988). The complaint alleged discrimination in governmental services based on age, marital status and religion and alleged retaliation. The Wheelers alleged that the Department denied them an adoption based upon their ages of 45 and 39 (at the time the complaint was filed), the fact that the couple had been previously married to each other and divorced prior to remarrying and upon their fundamental religion and that the Department had retaliated against them for filing a previous complaint of discrimination. The Commission found that the Department based its adoption decisions upon preferences of natural parents concerning factors such as religion and that the Department relied upon age, marital status and religion in its own practices. The Commission found that during the time the Wheelers were eligible for an adoption, several infants were available to be adopted but the Department bypassed the Wheelers for adoptive parents with later eligibility dates. The Commission awarded the Wheelers nominal damages of $1 and ordered the Department of conduct a new home study of the Wheelers, to cease basing decision upon religion and to revise its policies concerning the use of age and marital status so the these factors are used only to determine eligibility at the time of initial approval for adoption.

-- Case No. 8801003410, In the Matter of the Application of the Missoula Community Hospital (October 25, 1988). The petition for a declaratory ruling requested an exemption from the Human Rights Act's prohibition on sex discrimination in employment so that the hospital could hire males was necessary to protect patient privacy. The Commission found that male gender was a bona fide occupational qualification for the position and ruled that the hospital could hire males only for these positions for as long as male nurses were unavailable and for as long as no other alternative exists.

-- Case No. PhE85-2496, Kagie v. Montana Department of Social and Rehabilitate Services, (December 2, 1988). The complaint alleged discrimination in employment based upon physical handicap. Kagie alleged that the Department fired him based upon a brain injury suffered in 1957. The Commission found that Kagie failed to meet his employer's legitimate expectations. The Commission found that the Department fired him because of poor work performance in record keeping, reporting and treatment of clients which was unrelated to Kagie's physical handicap. The Commission dismissed the case.

-- Case No. HpAET83-2026, Ragsdale v. Mountain States Telephone and Telegraph Co. (December 21, 1988). The complaint alleged discrimination in employment based upon physical handicap and alleged retaliation. Ragsdale alleged that Mountain State terminated him during reorganization rather than offering him an available position based upon his asthma and allergies. Ragsdale alleged that Mountain States retaliated against him for filing a discrimination complaint by threatening prosecution for criminal trespass after Ragsdale enter the Mountain States office building with an elementary school tour of the building. Mountain States alleged that it did not offer the available position to Ragsdale, who was at the top of second class radio operator's license. The Commission found that the license requirement was a pretext for discrimination and found that Mountain States failed to offer the position to Ragsdale because Ragsdale had missed some work days due to his physical handicaps. The Commission found that Mountain States had also retaliated against Ragsdale. The Commission awarded Ragsdale $12,909.00 in back pay plus $4,356.79 in interest and awarded nominal damages of $1 for retaliation. The case is presently on appeal to district court.

-- Case No. 8701003118, McCann v. Dodson Public Schools (March 31, 1989). The complaint alleged discrimination in employment based upon sex. McCann alleged that the school failed to pay her as a full-time teacher and paid her less that a male Native American teacher because of her female gender and caucasian race. The Commission found that the school paid the male teacher more because he filled a critical position by teaching a required course, coaching three sports and acting as athletic director and because his position was funded by a separate program. The Commission found that McCann did not teach a required course and that endorsement requirements prohibited the school from paying McCann as a full-time teacher. The Commission dismissed the case.

-- Case No. 8701003108, Elliott v. City of Helena (June 14, 1989). The complaint alleged discrimination in employment based upon age. Elliott alleged that the City discriminated against him based upon his age of 37 when it refused to allow him to apply for a position as a firefighter. The City refused to allow Elliott to apply for a position based upon the City's interpretation of a Montana statute which provides that firefighters may not be more than 34 years of age at the time he was originally appointed to a firefighter position in Lewistown, Montana prior to applying in Helena. The Commission found that the term "original appointment," within the meaning of the governing statue, means original appointment to any firefighter position in Montana covered by the statute rather than appointment to a present position. The Commission found that the City had discriminated against Elliott based upon his age and the Commission awarded Elliott $1,500.00 in damages for emotional distress. The Commission did not award back pay because the Commission found that the City would not have hired Elliott despite the discrimination because of the lack of a vacancy The case is presently on appeal to district court.

B. CASELOAD STATISTICS

In FY 89, 337 new cases were filed the Commission. The majority of cases alleged employment discrimination. A summary of the case filings by area and basis of discrimination and type of respondent follows:

AREA

271	Employment
33	Housing
14	Public Accommodation
7	Government Services
1	Financing
8	Insurance
2	Retaliation (non-employment)
1	Declaratory Rulings

BASIS*

1	Religion - Catholic
7	Religion - Other
107	Sex - Female
28	Sex - Male
1	National Origin (East Indian)
4	National Origin (Hispanic)
3	National Origin (Mexican)
3	National Origin (Other)
108	Age
1	Color
77	Handicap
27	Marital Status
3	Political Belief
41	Retaliation
2	Race (Asian/Pacific Islander)
11	Race (Black)
24	Race (American Indian)
1	Race (Other)
1	Race (White)

TYPE OF RESPONDENT

214	Private Employers
58	State & Local Government
2	Public College/University
5	School Districts
2	Unions
30	Private Landlords
3	Housing Authorities
5	Bar, Restaurants (public accommodations)
8	Insurance Companies
2	Grocery Stores (public accommodations)
2	Utilities (public accommodations)
2	Financial Institutions
4	Other

* Total equals more then 337 because some complaints allege more than one basis.

The Commission closed 286 cases during the fecal year and had 328 cases open at the end of the year. The following table summarized the closure by type:

21	Withdrawal with benefits
52	Predetermination settlements
105	No cause findings
17	Conciliations
20	Conciliation failure - right to sue issued
9	Dismissed when complainant filed private lawsuit
1	Declaratory ruling
15	Administrative closures
13	No jurisdiction
33	Withdrawal without benefits

C. PUBLIC EDUCATION EFFORTS

Individual commissioners and staff members provided information to approximately 3,000 members of the public in 51 speaking engagements on a variety of topics including AIDS, recent developments in discrimination law, housing discrimination, and hate group activity.

The staff also provided education and technical assistance to nearly 500 employers, businesses, and governmental agencies throughout Montana by responding to request for information. Approximately 200 of the inquiries related to employment, with approximately 100 relating to pregnancy and maternity leave and another 50 relating to handicap discrimination.

A large number of the requests for information (32%) directed to staff involved matters outside the Commission's jurisdiction, including wrongful discharge, drug and alcohol testing, and other personnel matters.

The staff also developed a new poster and brochures on discrimination and sexual harassment for distribution in FY90.

STATE OF MONTANA
Office of the Governor
EXECUTIVE ORDER NO. 24-81

Executive Order Directing the Department of Administration to Implement and Maintain an Equal Employment Opportunity Program in State Government

WHEREAS, equal opportunity in state government is a goal to which I am committed, and

WHEREAS, discriminating barriers to employment in state government must be eliminated, and

WHEREAS, an effective state equal employment opportunity program must be implemented and maintained.

NOW, WHEREOF, I, GEORGE TURMAN, by the authority vested in me as Governor of the State of Montana, pursuant to Article VI, Section 4, of the Constitution of the State of Montana and Sections 2-7-103, 2-15-103, and 2-15-201, Montana Codes Annotated, do hereby order the Department of Administration as follows:

1. Implement and maintain an Equal Employment Opportunity Program for all state government employees. Specifically the Department shall provide such regulations, standards, and other guidelines as may be necessary to implement and maintain an effective equal employment opportunity program throughout state government. The program objectives shall be to eliminate discrimination in personnel salaries and procedures, job structuring and classification, hiring, firing, promoting and training.
2. Monitor the Equal Employment Opportunity Program and submit a status report to me within 90 days of the end of each year.

This order is effective immediately.

GIVEN under my hand and the GREAT SEAL of the State of Montana this 13TH day of October in the year of our Lord One Thousand Nine Hundred Eight-One.

George Turman

GEORGE TURMAN, Acting Governor

ATTEST:

Jim Waltermire

JIM WALTERMIRE, Secretary of State

APPENDIX B

DESCRIPTION OF EEO-4 CATEGORIES

A. Officials and Administrators
Occupations in which employees set broad policies, exercise overall responsibility for execution of these policies, or direct individual departments or special phases of the agency's operation, or provide specialized consultation on a regional, district or area basis. Includes: department heads, bureau chiefs, division chiefs, directors, deputy directors, controllers, examiners, wardens, superintendents, sheriffs, police and fire chiefs and inspectors and kindred workers.

B. Professionals
Occupations which require specialized and theoretical knowledge which is usually acquired through college training or through work experience and other training which provides comparable knowledge. Includes: Personnel and labor relations workers, social workers, doctors, psychologists, registered nurses, economists, dieticians, lawyers, system analysts, accountants, engineers, employment and vocational rehabilitation counselors, teachers or instructors, police and fire captains and lieutenants and kindred workers.

C. Technicians
Occupations which require a combination of basic scientific or technical knowledge and manual skill which can be obtained through specialized post-secondary school education or through equivalent on-the-job training. Includes: computer programmers and operators, drafters, surveyors, licensed practical nurses, photographers, radio operators, technical illustrators, highway technicians, technicians (medical, dental, electronic, physical sciences), assessors, inspectors, police and fire sergeants and kindred workers.

D. Protective Service Workers
Occupations in which workers are entrusted with public safety, security and protection from destructive forces. Includes: police patrol officers, firefighters, guards, deputy sheriffs, bailiffs, correctional officers, detectives, marshals, harbor patrol officers and kindred workers.

E. Paraprofessionals
Occupations in which workers perform some of the duties of a professional or technician in a supportive role, which usually require less formal training and/or experience normally required for professional or technical status. Such positions may fall with an identified pattern of staff development and

promotion under a "New Careers" concept. Includes: library assistants, research assistants, medical aids, child support workers, policy auxiliary, welfare service aids, recreation assistants, homemakers aids, home health aides, and kindred workers.

F. Office and Clerical

Occupations in which workers are responsible for internal and external communication, recording and retrieval of data and/or information and other paperwork required in an office. Includes: bookkeepers, messengers, office machine operators, clerk-typists, stenographers, court transcribers, hearing reporters, statistical clerks, dispatchers, license distribution, payroll clerks and kindred workers.

G. Skilled Craft Workers

Occupations in which workers perform jobs which require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work which is acquired through on-the-job training and experience or through apprenticeship or other formal training programs. Includes: mechanics and repairers, electricians, heavy equipment operators, stationary engineers, skilled machining occupations, carpenters, compositors and typesetters and kindred workers.

H. Service-Maintenance

Occupations in which workers perform duties which result in or contribute to the comfort, convenience, hygiene or safety of the general public or which contribute to the upkeep and care of buildings, facilitates or grounds of public property. Workers in this group may operate machinery. Includes: chauffeurs, laundry and dry cleaning operatives, truck drivers, bus drivers, garage laborers, custodial employees, gardeners and groundskeepers, refuse collectors, construction laborers.

STATE OF MONTANA

PAYROLL PERSONNEL POSITION CONTROL

EEO INPUT AND EMERGENCY INFORMATION FORM

E E O INFORMATION (This part is required)

This information should be completed by the employee, subject to verification by the EEO Officer. The information is confidential and used only for statistical summary to evaluate fair employment practices.

Agency Name | **Agency Number**

Employee Name Last | First | Middle | **Soc.Security Number**

Home Phone Number	**Date of Birth**	**Sex**	**EEO Race/Ethnicity Codes**
502 ( ) — area	MM DD YY	M F	W White ☐ I American Indian or Alaskan Native ☐ S Hispanic ☐ A Asian or Pacific Islander ☐ B Black ☐

502 Are you a disabled person?	yes ☐ no ☐	Are you a veteran?	yes ☐ no ☐

Veteran and Disabled Veteran Status Codes

If you answered "yes" to the veteran question, check ONE box that best describes your veteran status.

1. Disabled Veteran

502
- M ☐ Disabled Vietnam Veteran (served between 8•5•64 – 5•7•75)
- N ☐ Disabled Veteran of Other Campaign or War
- O ☐ Other Disabled Veteran

2. Veteran — Not Disabled
- P ☐ Vietnam Veteran (served between 8•5•64 – 5•7•75)
- Q ☐ Veteran of Other Campaign or War
- R ☐ Other Veteran

EEO Officer or Designee Signature (verification)

FOR DATA PROCESSING USE ONLY

EMERGENCY INFORMATION

Your Office Phone No.	*Please indicate the person to be contacted in the event you are involved in an emergency and unable to contact the person yourself.*
530 —	

Emergency Notification (NAME)	**Relationship to Employee**
503	1 ☐ Spouse 2 ☐ Child 3 ☐ Parent 4 ☐ Other Family 5 ☐ Other

Emergency Contact Phone	504 Address	City	State	Zip
503 ( ) — area				

Comments (Use a maximum of 30 letters and spaces to indicate special considerations for contacting the emergency notification person.) For example: " M-Th. F & after 5 at home phone"
504

Employee Signature	*Date*

Please see instructions on back.

Dear State Employee,

Executive Order 24-81 of the State of Montana directs the Department of Administration to "Implement and maintain an Equal Employment Opportunity Program for all state government employees . . . to eliminate discrimination in personnel salaries and procedures, job structuring and classification, hiring, firing, promoting and training." Accurate EEO data on state employees is essential in carrying out the objectives of this Order.

Using the EEO Input and Emergency Information Form we seek to obtain reliable, accurate EEO data on state employees. The EEO information is confidential and will be used only for statistical summaries to evaluate fair employment practices. The definitions listed below are included to aid you in completing the form. Talk with your agency EEO Officer or call the EEO Section, State Personnel Division (444-3871) if you have questions about the form.

The Emergency Information section of the form is optional but should be completed if you wish to have someone contacted in the case of an emergency. Any questions concerning the Emergency Information may be directed to your supervisor.

Please complete the form and return it to your supervisor within two days. Thank you for your cooperation in completing the form.

American Indian/Alaskan Native - A person having origins in any of the original people of North America, who maintains cultural identification through tribal affiliation or community recognition.

Asian/Pacific Islander - A person having origins in any of the original people of the far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippines and Samoa.

Black - A person having origins in one of the black racial groups of Africa.

Hispanic - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race.

Disabled Person - A person having a physical or mental impairment which substantially limits a major life activity (such as walking, caring for oneself, seeing, hearing, speaking, learning or breathing); or has a record of such impairment; or is regarded as having such an impairment.

APPENDIX D

EXPLANATION OF TABLES ON NEW HIRES, PROMOTIONS, AND TERMINATIONS FOR WOMEN

(Tables 1 and 2 on following pages)

Permanent Employees

Statistics on these tables are for employees categorized as "permanent." Consequently, employment statistics on these tables may differ significantly from other statistical reports for the same time period which include employees not categorized as "permanent" such as those categorized as "temporary."

While employment practices affecting other than permanent employees are monitored through statistical reports for discriminatory effects, statistics on other than permanent employees have been excluded here since they are not as valid in assessing the executive branch's performance in the hiring, termination, and promotion of women.

Agency New Hires

This heading includes every hire of a permanent employee new to a particular agency. The "new hire" may have been an employee of another state agency. Consequently, statistics here should not be interpreted as "new to the executive branch."

Promotion

This heading includes any increase in grade or EEO-4 Category level of an employee without a change in the state agency they are employed with.

Category Promotions Only

This heading counts all employees who have changed EEO-4 Categories in receiving a promotion. An example would be an employee promoted from a position in Category B, Professionals, to a position in Category A, Administrators & Officials. Most promotions under this heading would also be "grade promotions" but it is possible that an employee could change from one Category to another without a change in grade.

Grade Promotions Only

This heading counts employees receiving a promotion in grade without a change in EEO Category. The heading "All Promotions" is the best indicator of all employees receiving grade promotions during the time period indicated.

All Agency Terminations

This heading counts all employees who have left a state agency's employment. Data here would include employees who accepted jobs with other state agencies.

Left State Government

This heading counts all state employees who terminated employment with an executive branch agency and did not accept employment with another executive branch state agency.

APPENDIX D

TABLE 1

NEW HIRES AND PROMOTIONS FOR WOMEN
EXECUTIVE BRANCH/PERMANENT EMPLOYEES ONLY

July 1, 1988, through June 30, 1989

	Montana	State		Agency New Hires			All Promotions			Category Promotions Only (to new Category)			Grade Promotion Only (within Category)		
EEO Category	Labor Force % Women	Women No.	Work Force % Women	Total No.	Women No.	Women %	Total No.	Women No.	Women %	Total No.	Women No.	Women %	Total No.	Women No.	Women %
Administrators	30.6%	149	21.1%	18	5	27.8%	88	18	20.5%	56	13	23.2%	32	5	15.6%
Professionals	49.1%	1,242	41.1%	296	142	48.0%	195	99	50.8%	89	47	52.8%	106	52	49.0%
Technicians	49.3%	1,040	55.4%	117	68	58.1%	215	113	52.6%	99	67	67.7%	116	46	39.7%
Protect. Services	11.3%	60	9.5%	89	9	10.1%	46	9	19.6%	5	1	20.0%	41	8	19.5%
Para Professonals	*	468	62.7%	69	46	66.7%	148	93	62.8%	45	33	73.3%	103	60	58.3%
Clerical	81.8%	1,273	90.3%	271	247	91.1%	127	113	89.0%	14	10	71.4%	113	103	91.2%
Skilled Craft	5.2%	29	3.9%	36	3	8.3%	65	5	7.7%	13	4	30.8%	52	1	1.9%
Service/Maintenance	*	172	37.6%	55	28	50.9%	35	19	54.3%	1	0	00.0%	34	19	55.9%
TOTAL	42.6%	4,433	46.2%	951	548	57.6%	919	469	51.0%	322	175	54.3%	597	294	47.1%

* Montana labor force digures for the Para Professional and Service/Maintenance EEO4 categories are not available separately. They are combined and the availabilit figure is 34.6% for women.

APPENDIX D

TABLE 2

NEW HIRES AND TERMINATIONS FOR WOMEN
EXECUTIVE BRANCH/PERMANENT EMPLOYEES ONLY

July 1, 1988, through June 30, 1989

	Montana	State		Agency New Hires			All Agency Terminations			Left State Government		
EEO Category	Labor Force % Women	Women No.	Work Force % Women	Total No.	Women No.	Women %	Total No.	Women No.	Women %	Total No.	Women No.	Women %
Administrators	30.6%	149	21.1%	18	5	27.8%	68	17	25.0%	60	15	25.0%
Professionals	49.1%	1,242	41.1%	296	142	48.0%	352	167	47.4%	288	137	47.6%
Technicians	49.3%	1,040	55.4%	117	68	58.1%	201	128	63.7%	166	107	64.5%
Protect. Services	11.3%	60	9.5%	89	9	10.1%	70	7	10.0%	66	7	10.6%
Para Professonals	*	468	62.7%	69	46	66.7%	119	87	73.1%	109	80	73.4%
Clerical	81.8%	1,273	90.3%	271	247	91.1%	244	219	89.8%	193	172	89.1%
Skilled Craft	5.2%	29	3.9%	36	3	8.3%	60	5	8.3%	52	4	7.7%
Service/Maintenance	*	172	37.6%	55	28	50.9%	56	27	41.5%	51	24	47.0%
TOTAL	42.6%	4,433	46.2%	951	548	57.6%	1,170	657	56.2%	985	546	55.4%

* Montana labor force digures for the Para Professional and Service/Maintenance EEO4 categories are not available separately. They are combined and the availability figure is 34.6% for women.

APPENDIX E

EXPLANATION OF APPLICANT FLOW ANALYSIS

(Tables 1 and 2 on following pages)

Applicant Flow Analysis examines the recruitment and selection of applicants to determine if these activities contribute to an underutilization problem.

A recruitment problem means there are fewer minorities, disabled or women applying for positions than would reasonably be expected compared to their availability in the civilian labor force. (See Table 1 in Appendix E, Applicant Rate.)

A selection or hiring problem means selection practices have an adverse impact on protected groups. A selection problem is commonly identified by comparing the selection rate of a protected group to the selection rate of the rest of the labor force, (i.e., comparing the selection rate of minorities to the selection rate of non-minorities). If a protected group's selection rate is significantly lower than the selection rate for other groups, then a selection problem exists. (See Table 2 in Appendix E, Selection Rate.)

In Appendix F, which is a detailed explanation of the Tables used in the text on women, minorities and the disabled, the analyses listed above are applied to assess the state's performance in the employment of protected groups, and to identify problem areas which should be addressed by state agencies in the future through affirmative action. Recommendations for correcting problem areas are addressed in the Chapter IV.

TABLE 1

APPLICANT FLOW ANALYSIS/APPLICATION RATES

FY 89 (July 1, 1988 - June 30, 1989)*

EEO Category	Men	Women	L.F.**	White	Minorities	Non-Disabled	Disabled
Administrators & Officials							
Number of Applicants	340	71		383	8	407	5
Application Rate	82.5%	17.2%	30.6%	93.0%	1.9%	98.8%	1.2%
Professionals							
Number of Applicants	2,580	1,560		3,745	164	3,950	196
Application Rate	62.2%	37.6%	49.1%	90.3%	4.0%	95.3%	4.7%
Technicians							
Number of Applicants	1,256	1,100		2,106	130	2,294	66
Application Rate	53.2%	46.6%	49.3%	89.2%	5.5%	97.2%	2.8%
Protective Services							
Number of Applicants	218	42		242	8	249	11
Application Rate	83.8%	16.2%	11.3%	93.1%	3.1%	95.8%	4.2%
Para Professional							
Number of Applicants	585	813		1,340	50	1,380	18
Application Rate	41.8%	58.2%	***	95.9%	3.6%	98.7%	1.3%
Clerical							
Number of Applicants	602	3,459		3,694	149	4,000	86
Application Rate	14.7%	84.7%	81.8%	90.4%	3.6%	97.9%	2.1%
Skilled Craft							
Number of Applicants	1,106	39		1,093	47	1,130	15
Application Rate	96.6%	3.4%	5.2%	95.5%	4.1%	98.7%	1.3%
Service & Maintenance							
Number of Applicants	361	206		517	23	551	19
Application Rate	63.3%	36.1%	***	90.7%	4.0%	96.7%	3.3%
All Categories							
Number of Applicants	7,048	7,290		13,120	579	13,961	416
Application Rate	49.0%	50.7%	42.6%	91.3%	4.0%	97.1%	2.9%

* Based on available data. Not all information on applicants and hires for FY 89 was entered into the data base at the time of this report. Some applicants did not fill out forms necessary to acquire this data or left some questions on the form unanswered.

** L.F. - Montana civilian labor force availability of women by category. Labor force figures by category are not available for minorities and the disabled. Overall availability for minorities is 4.8% and approximately 5.0% for the disabled.

*** Montana labor force figures for the Para Professional and Service/Maintenance EEO-4 categories are not available separately. They are combined and the availability figure is 34.6% for women.

TABLE 2

APPLICANT FLOW ANALYSIS/SELECTION RATES

FY 89 (July 1, 1988 - June 30, 1989)*

EEO Category	Men	Women	White	Minorities	Non-Disabled	Disabled
Administrators & Officials						
Number of Applicants	340	71	383	8	407	5
Number Hired	30	8	38	0	38	0
Selection Rate	8.8%	11.3%	9.9%	0.0%	9.3%	0.0%
Professionals						
Number of Applicants	2,580	1,560	3,745	164	3,950	196
Number Hired	158	142	271	10	291	9
Selection Rate	6.1%	9.1%	7.2%	6.1%	7.4%	4.6%
Technicians						
Number of Applicants	1,256	1,100	2,106	130	2,294	66
Number Hired	196	168	302	22	358	6
Selection Rate	15.6%	15.3%	14.3%	16.9%	15.6%	9.1%
Protective Services						
Number of Applicants	218	42	242	8	249	11
Number Hired	9	4	13	0	12	1
Selection Rate	4.1%	9.5%	5.4%	0.0%	4.8%	9.1%
Para Professional						
Number of Applicants	585	813	1,340	50	1,380	18
Number Hired	73	116	181	7	187	2
Selection Rate	12.5%	14.3%	13.5%	14.0%	13.6%	11.1%
Clerical						
Number of Applicants	602	3,459	3,694	149	4,000	86
Number Hired	67	351	369	14	417	2
Selection Rate	11.1%	10.1%	10.0%	9.4%	10.4%	2.3%
Skilled Craft						
Number of Applicants	1,106	39	1,093	47	1,130	15
Number Hired	206	11	208	9	216	1
Selection Rate	18.6%	28.2%	19.0%	19.1%	19.1%	6.7%
Service & Maintenance						
Number of Applicants	361	206	517	23	551	19
Number Hired	37	50	82	2	87	0
Selection Rate	10.2%	24.3%	15.9%	8.7%	15.8%	0.0%
All Categories						
Number of Applicants	7,048	7,290	13,120	579	13,961	416
Number Hired	776	850	1,464	64	1,606	21
Selection Rate	11.0%	11.7%	11.2%	11.1%	11.5%	5.0%

* Based on available data. Not all information on applicants and hires for FY 89 was entered into the data base at the time of this report. Some applicants did not fill out forms necessary to acquire this data or left some questions on the form unanswered.

APPENDIX F

EXPLANATION OF TABLES AND DATA ON
MINORITIES, DISABLED AND WOMEN

(Tables are in the Main Text)

Minorities (Chapter 1, page 4)

Utilization of minorities in state government is still below their representation in Montana's labor force and consequently needs continued methods towards improvement. The overall selection rate is slightly lower for minorities and their application rate is also lower than labor force availability. Therefore, the state needs to focus affirmative action on measures to attract a larger number of qualified minority applicants.

Disabled (Chapter 1, page 4)

The selection rate for the disabled was ignificantly lower than for the non-disabled. This implies the need for more training of hiring officials on reasonable accommodation for the disabled.

The disabled represented 2.9% of all applicants, considerably lower than their estimated 5.0% availability in the labor force. The executive branch's affirmative action measures for the disabled should focus on attracting a larger number of qualified disabled applicants.

Women (Chapter 1, page 4)

Women are 21.1% of executive branch employees in Category A, as compared to a 30.6% representation in the Montana civilian labor force. While selection and internal promotion rates for women in this category are high, women represented 17.2% of all applicants, nearly half of their labor force representation. The state's affirmative action measures for women in this category, therefore, should continue to focus on both attracting a larger number of qualified applicants, and training more women for management positions.

In Category B, Professionals, women comprise 41.1% of executive branch employees as compared to their 49.1% representation in Montana's civilian labor force. However, a large proportion of women professionals in the labor force are teachers, an occupation not prevalent in the state work force. Analysis of professional occupations in the state's work force indicates that an availability closer to 40% is more appropriate.

Although the overall representation of women in professional jobs equals their labor force availability, women still tend to be concentrated in the lower paying professional classes. There are a number of specific professional occupations where women continue

to be underutilized. Women also constitute only 37.6% of all applicants for professional positions. (This is a 5% increase from FY 88.) Affirmative action measures in this category, therefore, should focus on upward mobility, overall recruitment, and recruitment for women in non-traditional professional occupations.

Chapter 3, Tables G, H, I, and J

Table G

3.3% of all state workers are minorities, compared to a 4.8% representation in Montana's civilian labor force. Minorities represented 4.0% of all applicants for state positions and 4.3% of all those hired for state positions. The selection rate for minorities (64 hired divided by 579 applicants = 11.1% selection rate) is comparable to the selection rate for whites (1,464 hired divided by 13,120 applicants = 11.2% selection rate).

Table H

The disabled represented 3.0% of all applicants for state positions, as compared to 3.3% in FY 88. The disabled represented 1.8% of all state hires in FY 89 as compared to 3.1% in FY 88.

The 5.0% selection rate for the disabled (21 hired divided by 416 applicants) is substantially less than the 11.5% selection rate for the non-disabled (1,606 hired divided by 13,961 applicants). The selection rate for disabled is 43.5% of the selection rate for non-disabled. This does not fall within the EEOC's 4/5's or 80% rule.* It also represents a decline from FY 88 when the selection rate for the disabled was 96.2% of the selection rate for the non-disabled.

A comparison of current disabled representation in state government for permanent positions (3.0%) to the end of FY 88 (3.2%), indicates a loss of disabled representation.

* Under this rule, if the selection rate for a protected group is less than 4/5's or 80% of the selection rate for the non-protected group, then adverse impact is a problem. In this case the selection rate for the disabled is more than 80% of the selection rate for the non-disabled and is consequently not considered a problem under the rule.

50.7% of all state applicants were women. Women represented 57.6% of all state hires. Women had a 11.7% selection rate (850 hired divided by 7,290 applicants) as compared to a 11.0% selection rate for men (776 hired divided by 7,048 applicants).

(Information on applicant flow, application and selection rates, hires, promotions and terminations of permanent employees is included in tables in the Appendix.)

Women in both the civilian labor force and in the state workforce are concentrated in lower-paying occupational categories such as clerical, and in the lower levels of the higher-paying occupational categories such as professionals and managers. This results in a significant wage gap between the average wage men earn and the average wage women earn in state government.*

While state government exceeds the civilian labor force overall in the employment of women, several EEO categories in state government still lag behind the labor force in female representation. These are Category A, Administrators and Officials (21.1% v. 30.6%); Category B, Professionals (41.1% v. 49.1%); Category D, Protective Services (9.5% v. 11.3%); and Category G, Skilled Craft (3.9% v. 5.2%). Categories A and B are examined in more detail in Chapter III.

Categories D and G are not examined in detail here because of the relatively small number of employees in each category, the smaller underutilization problem, and because the majority of employees in these categories are employed in two or three agencies. Employment of women in Categories D and G, however, is regularly monitored by the EEO Section to assess the need for affirmative action and the success of affirmative action measures.

* (The average salary of permanent, full-time women employees was 77% of the average salary of permanent, full-time men employees, resulting in a 23% wage gap as reported in the Comparable Worth Report to the 1987 Montana Legislature.)

Table J

There was little change in representation of women in Category A from FY 88. Representation of women in this category increased slightly from 20.6% in FY 88 to 21.1% in FY 89.

In FY 89 women were 37.6% of applicants for positions in Category B and were 48% of all hires. The selection rate for women is 9,1% as compared to a 6.1% selection rate for men in this category. (See also Table C.)

The representation of women in Category B has increased from FY 88. Representation of women in this category increased from 40.7% in FY 88 to 41.1% in FY 89.

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